

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

KEVIN COBBS and
MARLANA FICHTNER,

Plaintiffs,

v.

DAVID CLEMENTS and
ETHAN THIBAUT,

Defendants.

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File No. 1:08-CV-244

RULING ON PLAINTIFFS' MOTION
FOR SERVICE BY PUBLICATION
(Paper 9)

The Court issued an Order on April 27, 2009 requesting proof of service of the Complaint as to Ethan Thibault, or an explanation why service has not been made. (Paper 8.) On May 14, 2009, Plaintiffs responded explaining the sheriffs could not serve Mr. Thibault because he is in Iraq. (Paper 9.) Plaintiffs' response also included a request to serve Mr. Thibault by publication.

Federal Rule of Civil Procedure 4 governs service and provides specifically for service of process on individuals in foreign countries. See Fed. R. Civ. P. 4(f). Rule 4(f) provides three types of service, none of which is service by publication. Id. Rule 4 also provides a mechanism through which a plaintiff may request waiver of service. Id. 4(d).

Federal courts allow service by publication where other means have failed. BP Prods. N. Am., Inc. v. Dagra, 236 F.R.D. 270, 272 (E.D. Va. 2006). “Where the plaintiff can show that deliberate avoidance and obstruction by the defendant[] made the giving of notice impossible, statutes and caselaw have allowed substitute notice by mail and by publication’” Id. (quoting SEC v. Tome, 833 F.2d 1086, 1092 (2d Cir. 1987)). Plaintiffs have not attempted to serve Mr. Thibault in Iraq or alleged deliberate avoidance and obstruction by Mr. Thibault.

Accordingly, the Plaintiffs’ motion for service by publication (Paper 9) is DENIED.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 29th day of May, 2009.

/s/ J. Garvan Murtha
Honorable J. Garvan Murtha
United States District Judge